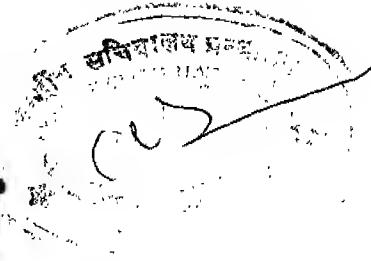




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The Gazette of India



अतिरिक्त

EXTRAORDINARY

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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 29th July, 1993:—

I

BILL NO. LXII OF 1993

A Bill further to amend the Extradition Act, 1962.

Be it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Extradition (Amendment) Act, 1993.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

34 of 1962.

2. In the Extradition Act, 1962 (hereinafter referred to as the principal Act), in the long title, after the word "criminals", the words "and to provide for matters connected therewith or incidental thereto" shall be added.

Short title,
extent
and com-
mence-
ment.

Amend-
ment of
long
title.

Substitution of words "foreign State" for words "commonwealth country".

Amendment of section 2.

Amendment of section 3.

3. In the principal Act,—

(a) the words "or commonwealth country" and the words "or country", wherever they occur, shall be omitted;

(b) for the words "commonwealth country", wherever they occur, the words "foreign State" shall be substituted.

4. In section 2 of the principal Act,—

(a) for clause (a), the following clause shall be substituted, namely:—

'(a) "composite offence" means an act or conduct of a person occurred, wholly or in part, in a foreign State or in India but its effects or intended effects, taken as a whole, would constitute an extradition offence in India or in a foreign State, as the case may be:';

(b) for clause (c), the following clause shall be substituted, namely:—

'(c) "extradition offence" means—

(i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;

(ii) in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence;'

(c) in clause (d), for the words "or agreement" at both the places where they occur, the words ", agreement or arrangement" shall be substituted;

(d) in clause (e), the words "other than a commonwealth country," shall be omitted;

(e) for clause (f), the following clause shall be substituted, namely:—

'(f) "fugitive criminal" means a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign State.'

5. In section 3 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government may, by notified order, direct that the provisions of this Act, other than Chapter III, shall apply to such foreign State or part thereof as may be specified in the order.";

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Where there is no extradition treaty made by India with any foreign State, the Central Government may, by notified order, treat any Convention to which India and a foreign State are parties, as an extradition treaty made by India with that foreign State providing for extradition in respect of the offences specified in that Convention.”.

6. In Chapter II of the principal Act, in the heading, the words “AND TO COMMONWEALTH COUNTRIES” shall be omitted. Amend-
ment of Chapter II.

7. In section 10 of the principal Act, in sub-section (2), in clause (d), the Word “respectively” shall be omitted. Amend-
ment of section 10.

8. In section 11 of the principal Act, the words “of a commonwealth country” shall be omitted. Amend-
ment of section 11.

9. In Chapter III of the principal Act, in the heading, for the words “COMMONWEALTH COUNTRIES”, the words “FOREIGN STATES” shall be substituted. Amend-
ment of Chapter III.

10. In section 12 of the principal Act, in sub-section (1), for the word “country”, the word “State” shall be substituted. Amend-
ment of section 12.

11. In Chapter IV of the principal Act, in the heading, the words “OR COMMONWEALTH COUNTRIES” shall be omitted. Amend-
ment of Chapter IV.

12. For section 21 of the principal Act, the following section shall be substituted, namely:—

“21. Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than—

(a) the extradition offence in relation to which he was surrendered or returned; or

(b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(c) the offence in respect of which the foreign State has given its consent.”.

Accused or con-
victed person
surrendered or
returned
by foreign
State
not to be
tried
for
certain
offences.

Amend-
ment of
section
25.

Amend-
ment of
section
26.

Amend-
ment of
section
30.

Amend-
ment of
section
31.

Substitu-
tion of
new sec-
tions for
section
34.

Extra
territorial
jurisdi-
ction.

Prosecu-
tion on
refusal
to ex-
tradition.

5 of 1898.
2 of 1974.

13. In section 25 of the principal Act, for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted.

14. In section 26 of the principal Act, after the words "of abetting", the words ", conspiring, attempting to commit, inciting or participating as an accomplice in the commission of" shall be inserted.

15. In section 30 of the principal Act, the words "or commonwealth country or from any foreign State and any commonwealth country" shall be omitted.

16. In the principal Act,—

(a) section 31 shall be re-numbered as sub-section (1) of that section and in sub-section (1), as so re-numbered, for clause (c), the following clause shall be substituted, namely:—

"(c) unless provision is made by that law of the foreign State or in the extradition treaty with the foreign State that the fugitive criminal shall not be determined or tried in that State for an offence other than—

(i) the extradition offence in relation to which he is to be surrendered or returned;

(ii) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(iii) the offence in respect of which the Central Government has given its consent;"

(b) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) For the purposes of sub-section (1), the offences specified in the Schedule shall not be regarded as offences of a political character.

(3) The Central Government having regard to the extradition treaty made by India with any foreign State may, by notified order, add or omit any offence from the list given in the Schedule."

17. For section 34 of the principal Act, the following sections shall be substituted, namely:—

"34. An extradition offence committed by any person in a foreign State shall be deemed to have been committed in India and such person shall be liable to be prosecuted in India for such offence.

34A. Where the Central Government is of the opinion that a fugitive criminal cannot be surrendered or returned pursuant to a request for extradition from a foreign State, it may, as it thinks fit, take steps to prosecute such fugitive criminal in India.

34B. (1) On receipt of an urgent request from a foreign State for the immediate arrest of a fugitive criminal, the Central Government may request the Magistrate having competent jurisdiction to issue a provisional warrant for the arrest of such fugitive criminal.

Provisional arrest.

(2) A fugitive criminal arrested under sub-section (1) shall be discharged upon the expiration of sixty days from the date of his arrest if no request for his surrender or return is received within the said period.

34C. Notwithstanding anything contained in any other law for the time being in force, where a fugitive criminal, who has committed an extradition offence punishable with death in India, is surrendered or returned by a foreign State on the request of the Central Government and the laws of that foreign State do not provide for a death penalty for such an offence, such fugitive criminal shall be liable for punishment of imprisonment for life only for that offence.”.

Provision of life imprisonment for death penalty.

18. In the principal Act, for the First and Second Schedules, the following Schedule shall be substituted, namely:—

Substitution of new Schedule for the First and Second Schedules.

“THE SCHEDULE

[See section 31(2)]

OFFENCES WHICH ARE NOT TO BE REGARDED AS OFFENCES OF A POLITICAL CHARACTER

The following list of offences is to be construed according to the law in force in India on the date of the alleged offence. Wherever the names of the relevant Acts are not given, the sections referred to are the sections of the Indian Penal Code (45 of 1860):—

1. Offences under the Anti-Hijacking Act, 1982 (65 of 1982).
2. Offences under the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982).
3. An offence within the scope of the Convention on the punishment of crimes against Internationally protected persons including diplomatic agents, opened for signature at New York on 14th December, 1973.
4. An offence within the scope of the International Convention against the taking of hostages opened for signature at New York on 18th December, 1979.
5. Culpable homicide, murder (sections 299 to 304).
6. Voluntarily causing hurt or grievous hurt by a dangerous weapon or means (sections 321 to 333).
7. Offences under the Explosive Substances Act, 1908 (6 of 1908).
8. Possession of a fire arm or ammunition with intention to endanger life [section 27 of the Arms Act, 1959 (54 of 1959)].
9. The use of a fire arm with intention to resist or prevent the arrest or detention [section 28 of the Arms Act, 1959 (54 of 1959)].

10. Causing of loss or damage to property used for public utilities or otherwise with intention to endanger life (section 425 read with section 440).
11. Wrongful restraint and wrongful confinement (sections 389 to 348).
12. Kidnapping and abduction including taking of hostages (sections 359 to 369).
13. Offences related to terrorism and terrorist acts [Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987)].
14. Abetting, conspiring or attempting to commit, inciting, participating as an accomplice in the commission of any of the offences listed above.”

STATEMENT OF OBJECTS AND REASONS

At present, the Law of Extradition in India is contained in the Extradition Act, 1962 (Act 34 of 1962). The 1962-Act made a distinction between Commonwealth countries and foreign States and considered only foreign States as treaty States. The extradition with Commonwealth countries was separately governed by the Second Schedule of the Act and the Central Government was given powers under Chapter III to conclude special extradition arrangements with respect to Commonwealth countries only. Such distinction made in the Extradition Act, 1962 between foreign States and Commonwealth countries does not hold good in view of the change of time and rapid developments in Extradition Law at international level. Commonwealth countries are concluding extradition treaties among themselves. India has in recent years concluded separate extradition treaties with Canada and UK. Moreover, the Civil Law countries have specific requirements for purposes of extradition with them. In addition, terrorism and drug trafficking as two most heinous crimes affecting innocent lives, have thrown new challenges necessitating changes in the existing Extradition Law to effectively deal with these new crimes. Many international Conventions dealing with these and other crimes have laid down specific obligation on State parties to extradite or prosecute a fugitive offender. India is a State party to many of these international Conventions.

2. The purpose of the Bill is to amend the Extradition Act, 1962, to suitably incorporate in it the above noted changes and to achieve, *inter alia*, the following objectives:

- (a) to enable India to conclude extradition treaties with foreign States including the Commonwealth countries without treating them structurally different;
- (b) to provide for extra-territorial jurisdiction over foreigners for crimes committed by them outside India;
- (c) to incorporate composite offences in the definition of extradition offence;
- (d) to exclude political offence as a defence in cases of offences of a serious nature;
- (e) to cover extradition requests on the basis of international Conventions within the scope of the Act;
- (f) to enable Central Government to make and receive requests for provisional arrest of fugitives in urgent cases pending the receipt of the formal extradition request;

(g) to enable the Central Government to give assurance pursuant to a treaty obligation to the requested State for the non-execution of death penalty.

3. The Bill seeks to achieve the above objects.

DINESH SINGH.

II

BILL No. LXIII OF 1993

A Bill further to amend the Parliament (Prevention of Disqualification) Act, 1959.

Be it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Parliament (Prevention of Disqualification) Amendment Act, 1993.

Short title and commencement.

(2) Section 2 and clauses (b) and (d) of section 3 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 19th day of July, 1993.

Amendment of section 2.

10 of 1959. 2. In section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (hereinafter referred to as the principal Act), in clause (a), for the words and figures “the Salaries and Allowances of Members of Parliament Act, 1954”, the words and figures “the Salary, Allowances and Pension of Members of Parliament Act, 1954” shall be substituted.

Amendment of Section 3.

30 of 1954. 3. In section 3 of the principal Act,—

(a) after clause (aa), the following clause shall be inserted, namely:—

“(ab) the office of Deputy Chairman, Planning Commission;”;

(b) after clause (b), the following clause shall be inserted, namely:—

“(ba) the office of chairperson of—

(i) the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992;

(ii) the National Commission for the Scheduled Castes and Scheduled Tribes constituted under clause (1) of article 338 of the Constitution;

(iii) the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990;”;

(c) for clause (i), the following clause shall be substituted, namely:—

“(i) the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule, and (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule;”;

(d) in *Explanation I*, for the words “chairman or secretary”, the words “chairman, Deputy Chairman or secretary” shall be substituted.

4 In the Schedule to the principal Act, Part III shall be omitted.

Amendment of the Schedule.

Repeal and saving.

5. (1) The Parliament (Prevention of Disqualification) Amendment Ordinance, 1993 is hereby repealed.

Ord. 20 of 1993.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

19 of 1992.

20 of 1990.

STATEMENT OF OBJECTS AND REASONS

The Joint Committee on Offices of Profit (Tenth Lok Sabha) in their Second Report examined the composition, character, functions, etc., of the Planning Commission, the Minorities Commission (now the National Commission for Minorities), the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women constituted by the Government of India and the emoluments and allowances payable to their chairpersons, vice-chairpersons, members, etc., with a view to consider whether the holders of offices of these Commissions would incur disqualification under article 102(1) (a) of the Constitution for being chosen as, or for being, a Member of Parliament. The Committee, in paragraph 22 of their aforesaid Report, recommended as under:—

“22. The Committee are of the view that though all the offices examined by the Committee in this Report carry salary and thereby could strictly speaking be considered as offices of profit, for speedy implementation of socio-economic development programmes of Government it is essential to associate Members of Parliament with the working of these Commissions of national importance. They therefore, recommend that the Government should amend the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959) expeditiously so as to include these offices under the relevant Schedule to prevent the holders of these posts from incurring disqualification for being chosen as, or for being a Member of Parliament.”.

2. In view of the urgency felt by the Government and pending detailed examination of the Report, the Parliament (Prevention of Disqualification) Act, 1959 was amended by the Parliament (Prevention of Disqualification) Amendment Act, 1992 (20 of 1992) for exempting the holder of office of Deputy Chairman, Planning Commission from incurring disqualification. On re-examination of the matter, it was noticed that the amendment did not serve the purpose as the Schedule to the 1959 Act enumerates the names of such of the bodies in relation to which the holders of the offices are excluded from exemption from incurring disqualification. In order to rectify the position and to give effect to the intention of Parliament expeditiously in exempting the holder of office of Deputy Chairman, Planning Commission from incurring disqualification, the Parliament (Prevention of Disqualification) Amendment Ordinance, 1993 (Ord. 29 of 1993) was promulgated on the 19th July, 1993.

3. It is proposed to replace the said Ordinance and give effect to the other recommendations of the Joint Committee referred to above. It is also proposed to make certain incidental and consequential amendments including the change in the short title of Act 30 of 1954.

4. The Bill seeks to achieve the above object.

H. R. BHARDWAJ.

Memorandum explaining the modifications contained in the Bill to replace the Parliament (Prevention of Disqualification) Amendment Ordinance, 1993.

The Parliament (Prevention of Disqualification) Amendment Bill, 1993, which seeks to repeal and replace the Parliament (Prevention of Disqualification) Amendment Ordinance, 1993 (Ord. 29 of 1993), proposes to make the modifications as set out in paragraph 2, apart from modifications of a consequential or drafting nature, in the provisions contained in the said Ordinance.

2. Clause 2 of the Bill (which is an additional provision) proposes to amend section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959). This has been done only for the purpose of incorporating the correct reference to the short title of Act 30 of 1954, which was amended from "the Salaries and Allowances of Members of Parliament Act, 1954" to "the Salary, Allowances and Pension of Members of Parliament Act, 1954" in 1976 by Act 105 of 1976. In clause 3 of the Bill (which corresponds to section 2 of the Ordinance) it has been proposed to insert sub-clause (b) for implementing the recommendations of the Joint Committee on Offices of Profit (Tenth Lok Sabha) as contained in their Second Report relating to exempting the holders of Chairpersons of (i) the National Commission for Minorities (ii) the National Commission for the Scheduled Castes and Scheduled Tribes, and (iii) the National Commission for Women. Sub-clause (d) has been inserted as a consequential change required by insertion of sub-clause (b).

3. Other modifications contained in the Bill are clarificatory and consequential in nature.

V. S. RAMA DEVI,
Secretary-General.